

1 the first time an audience that wasn't in  
2 Johannesburg could see it. And it's one of  
3 many, many, many matches that we put on. And  
4 we chose to run it a number of times.

5 Q And this is like a lot of the  
6 programming you do. You pick up tennis  
7 matches places like Johannesburg, start  
8 running it three days after the match is over,  
9 and run it seven times over the next couple of  
10 weeks. And you call that anchor programming,  
11 right?

12 A If it's going to -- well, we would  
13 -- it could be programming, absolutely.

14 Q And do you remember you didn't  
15 have to pay Johannesburg anything for the  
16 rights to this tournament, did you?

17 A Well, see, it's presumably an ATP  
18 tournament. So there are fees associated with  
19 the ATP.

20 Q You didn't have to pay any  
21 significant rights fees for this tournament,  
22 correct?

1           A       I don't recall that specific  
2 tournament.

3           Q       Okay. You can put that aside, if  
4 you would, please.

5                   MR. CARROLL: Your Honor, if you  
6 will bear with me just a second, I'm going to  
7 see if I can wrap some things up here.

8                   (Pause.)

9                   BY MR. CARROLL:

10          Q       I'm going to change subjects, Mr.  
11 Solomon. Do you --

12                   JUDGE SIPPEL: Can we have  
13 somebody in now or are we --

14                   MR. CARROLL: I'm sorry. Yes, we  
15 absolutely can. Forgive me for that. Thank  
16 you.

17                   (End Closed Session.)  
18  
19  
20  
21  
22

1 BY MR. CARROLL:

2 Q Are you familiar with something  
3 called the Sportsman Channel?

4 A I have heard of it.

5 Q And the Outdoor Channel?

6 A Yes.

7 Q Did one of your people leave  
8 Tennis Channel to join, one of your top people  
9 to join, either Outdoor Channel or Sportsman  
10 Channel? Do you remember?

11 A I believe so.

12 Q Who was that, sir?

13 A I believe Randy Brown.

14 Q And who did he join? Was it  
15 Outdoor Channel?

16 A I think he joined Outdoor Channel.

17 Q Do you remember, now, Outdoor  
18 Channel and Sportsman Channel, they're not  
19 owned by Comcast, correct?

20 A Not to my knowledge.

21 Q Okay. And they're independent  
22 channels just like you?

1           A       I believe that's -- I believe  
2       they're independent, yes.

3           Q       Okay. And do you know whether  
4       they were able in 2009, the same year you made  
5       your offer to Mr. Bond, do you know whether  
6       those channels were able to get wide  
7       distribution deals with Comcast?

8           A       I don't.

9           Q       Let me see if I can refresh you,  
10      sir.

11                 MR. CARROLL: Your Honor, may I  
12      approach?

13                 JUDGE SIPPEL: Please do.

14                 MR. CARROLL: This is exhibit 707.

15                 (Whereupon, the aforementioned  
16      document was marked for  
17      identification as Exhibit Number  
18      707.)

19                 BY MR. CARROLL:

20           Q       Do you have 707 in front of you?

21           A       I do.

22           Q       For the record, a single page,

1       TTC00018552. This is an e-mail exchange you  
2       are having with your CFO in October of 2009.  
3       So this is a few months after your meeting  
4       with Mr. Bond and your proposal you described  
5       earlier today, correct?

6               A       Yes.

7               Q       You see Mr. Simon writes you at  
8       the bottom -- this is in reverse order. So we  
9       will read the bottom first, "Comcast" is the  
10      subject. "Carriage. Comcast agreed to move  
11      the Sportsman Channel to a more widely  
12      distributed tier, identifies what it is,  
13      digital preferred in markets including  
14      Minneapolis, St. Paul, Minnesota; Savannah,  
15      Georgia; and three cities in New Mexico." Do  
16      you see that?

17              A       I do.

18              Q       Is this the first you had learned  
19      of that from Mr. Simon or had you heard about  
20      that already?

21              A       I don't know.

22              Q       And you will agree with me that

1       that is a region-specific distribution level  
2       of the sort I asked you about earlier where  
3       certain markets were targeted for grater  
4       distribution. Do you see that?

5               A       Yeah. It looks like it's a  
6       discussion about some individual cities or  
7       markets.

8               Q       Exactly what Mr. Bond had proposed  
9       to you for your consideration a few months  
10       earlier in May, correct?

11              A       I wouldn't say that it's exactly  
12       what Mr. Bond proposed to me. I would say  
13       that that were able to strike a deal in some  
14       individual markets. .

15              Q       Mr. Bond had proposed to you a  
16       discussion about particular markets, a  
17       region-by-region approach, correct?

18              A       No. Mr. Bond said that we were  
19       free to go talk to individual markets. He  
20       didn't propose any upgrades or increased  
21       distribution in any markets, to my knowledge.

22              Q       We have your testimony already.

1 I'm not going to revisit it. And here you're  
2 learning from your CFO, gee, Sportsman Channel  
3 just got wider distribution than you have,  
4 Tennis Channel, in these markets, right?

5 A Well, it just said more widely  
6 distributed. It appears to me to read more  
7 widely than they had had prior, not than us.

8 Q It says, "digital preferred." You  
9 don't have digital preferred. That's why  
10 we're here.

11 A I'm simply -- you asked me to  
12 confirm that that's what he was saying. And  
13 I'm saying that the note appears to say that  
14 it is more widely distributed than it had  
15 been. I'm not saying it was or wasn't more  
16 widely distributed than we are in those  
17 markets.

18 Q Sir, isn't the whole reason you  
19 are having this dialogue with Mr. Simon  
20 because he is saying to you, "Gee, here is  
21 another independent channel that just got  
22 broader distribution than we have got"?

1 That's why he's curious about it, isn't it?

2 A I think it's just a point of  
3 information. You seem to characterize things  
4 in a way that I wouldn't necessarily  
5 characterize them. So I'm being very careful  
6 not to confirm things that I think wouldn't  
7 necessarily be accurate.

8 Q Let me do it this way. Do you see  
9 the words "digital preferred" in the  
10 parentheses in Mr. Simon's note to you?

11 A Yes.

12 Q That's greater penetration than  
13 you have from Comcast, agreed?

14 A Yes. I already said that.

15 Q That's the penetration you  
16 proposed to Mr. Bond as one of the things you  
17 would be interested in a few months earlier,  
18 correct?

19 A I think so. I think the digital  
20 preferred is D1 or something like that. I'm  
21 not sure.

22 Q And now you're finding out a few



1 months later that, gee, another independent  
2 channel, the Sports Channel, got digital  
3 preferred penetration from Mr. Bond in these  
4 markets, correct?

5 A Yes.

6 Q Okay. And your answer back is  
7 what I want to focus on next. You go, "Yep.  
8 Dollar sign, dollar sign, dollar sign, dollar  
9 sign."

10 A Uh-huh.

11 Q That's what you wrote, right?

12 A Yeah.

13 Q Meaning that they got the  
14 distribution by not charging as much?

15 A I don't know that.

16 Q Well, what did you mean when you  
17 wrote "Dollar sign, dollar sign, dollar sign,  
18 dollar sign"?

19 A I don't know. I'm sure I meant  
20 that there was value exchanged, but we  
21 suggested to Mr. Bond that we wouldn't charge  
22 as much either. And that didn't seem to do

1 the trick for us.

2 Q No. Isn't it a fact that you  
3 wrote "Yep. Dollar signs" because you knew  
4 that the difference between what Sportsman  
5 Channel had done and what you had done is that  
6 they were willing to cut a deal that didn't  
7 impose large costs on Comcast. Isn't that  
8 correct?

9 A I don't know that to be true at  
10 all.

11 Q Isn't that what you believed? And  
12 isn't that why you wrote "Dollar signs"? The  
13 difference between what they did and what you  
14 had offered is that they had offered something  
15 that didn't impose costs on Comcast, correct?

16 A No.

17 Q Did you ever follow up to find out  
18 how it was that Sportsman Channel, this  
19 independent programmer, that my client doesn't  
20 own any part of was about to get a digital  
21 preferred deal and you weren't? Did you ever  
22 follow up?

1           A       I don't know.

2           Q       You had already decided to sue my  
3       client for discrimination or did you make that  
4       decision after this e-mail?

5           A       I'm not sure that this e-mail had  
6       anything to do with that decision. In fact,  
7       I don't think that it would.

8           Q       That's what I thought.

9                   Now, the top note back from Mr.  
10       Simon, who seems to understand you -- he  
11       doesn't say, "What do you mean 'dollar sign'?"  
12       He says, "Yeah. Same with Outdoor Channel,"  
13       right?

14          A       Yes, that's what he says.

15          Q       You, seem to know exactly what you  
16       are saying back and forth to each other. And  
17       isn't what he's telling you "Gee, Outdoor  
18       Channel got a digital preferred deal also  
19       because they did a deal that didn't impose  
20       additional costs on Comcast. Isn't that what  
21       you and he were discussing?

22          A       I don't know what the deal was

1       about or why. It doesn't seem to represent  
2       that to me necessarily at all.

3               Q       Now, necessarily. Okay. Now, the  
4       guy at Outdoor Channel who did this deal used  
5       to work for you, Randy Brown, right?

6               A       Yes if he did the deal. I don't  
7       know if he did the deal or he didn't do the  
8       deal.

9               Q       Did you pick up the phone and say,  
10      "Randy, God, I've been trying to get digital  
11      carriage with Comcast. How did you do it?"

12              A       I don't think so.

13              Q       No. You didn't even bother to  
14      pick up the phone and call and ask, did you?

15              A       Not that I recall.

16              Q       And do you think it's  
17      discrimination for Comcast to have done a deal  
18      with Outdoor Channel and Sportsman Channel  
19      that they don't own and give them this  
20      distribution? You are not alleging that is  
21      discrimination, are you?

22              A       I don't know why they did this or

1        what the terms or who did it. This to me  
2        seemed to be a fleeting one-word response with  
3        four keystrokes and my initials after it. I  
4        am not sure how much thought I gave it beyond  
5        a couple of seconds on October 20th in 2009.

6                Q        And one more thing. When you  
7        learned this, did you call up Mr. Bond and  
8        say, "Nat, okay. I heard you got this deal  
9        with Sports Channel, Outdoor Channel. You  
10       don't own any of them. And I guess I was  
11       wrong. You gave them broader distribution.  
12       Can I do a deal like they did? Can you tell  
13       me how they were able to do that deal?" Did  
14       you call up Mr. Bond and say anything like  
15       that to him?

16               A        Our distribution head may have  
17       done that, for all I know. We are constantly  
18       trying to find a way and have continued and  
19       will continue to find a way to get broader  
20       distribution with Mr. Bond and his team.

21                        I don't know what happened at this  
22       specific moment. And I'm not sure why

1 reflexively every time someone else does  
2 something with Comcast, it would be incumbent  
3 upon us to examine it and then replicate it.

4 I'm not sure what the similarities  
5 or differences are between Tennis Channel and  
6 Outdoor Channel and the Sportsman's Channel or  
7 not.

8 Q And you don't know any of those  
9 things because you didn't bother to pick up  
10 the phone and find out, correct?

11 A I did not pick up the phone and  
12 bother to follow up on this because I don't  
13 know what I did.

14 Q Okay.

15 A I don't remember seeing this.

16 Q You can put that to the side, sir.  
17 Your Honor, may I have one moment to check  
18 with one of my colleagues on one?

19 JUDGE SIPPEL: Sure.

20 MR. CARROLL: Thank you.

21 (Pause.)

22 MR. CARROLL: Your Honor, my team

1 has told me I am finished. So subject to any  
2 follow-up on anything Mr. Phillips would have,  
3 those are our questions at this time.

4 My colleagues will have a list of  
5 the exhibits that we want to move into  
6 evidence. I can do that at the end of the  
7 next round if you wish or I can do that right  
8 now in terms of reciting them for the record  
9 and saying we're moving those into evidence.

10 JUDGE SIPPEL: I mean, if we don't  
11 have them in the record yet --

12 MR. CARROLL: That's my  
13 suggestion, sir.

14 JUDGE SIPPEL: You were going to  
15 go over these names.

16 MR. CARROLL: You know, shame on  
17 me. I did promise that. My apologies.

18 JUDGE SIPPEL: Is there another  
19 way you want to do it? I mean, you may want  
20 to -- I think it's quick --

21 MR. CARROLL: It would be easier  
22 to let Mr. Phillips go now.

1 JUDGE SIPPEL: Yes, that's fine.

2 MR. CARROLL: And I will as part

3 of my --

4 JUDGE SIPPEL: If you don't, I

5 will.

6 MR. CARROLL: Yes. Okay.

7 JUDGE SIPPEL: Let's go. Let's

8 go.

9 MR. PHILLIPS: If you tell me

10 which exhibit that was? It was the one before

11 this one. I don't know which one it was.

12 Actually, while we're doing this --

13 JUDGE SIPPEL: Do you want to go

14 off the record and --

15 MR. PHILLIPS: No. That's all

16 right. We can keep going. Mr. Schmidt here

17 is far more organized than I am.

18 JUDGE SIPPEL: Yes. It was on

19 726.

20 MR. PHILLIPS: Your Honor, where I

21 would like to start is right where Mr. Carroll

22 left off.



1 JUDGE SIPPEL: Fair enough.

2 MR. CARROLL: Your Honor, wouldn't  
3 the enforcement policy happen next?

4 JUDGE SIPPEL: Wait a minute.  
5 Let's all be quiet. Go ahead. Mr. Kellett,  
6 go ahead.

7 CROSS-EXAMINATION

8 BY MR. KNOWLES-KELLETT:

9 Q I just had one thing that I would  
10 like to understand about the economics of this  
11 whole thing. You say you put together an  
12 irresistible deal for Comcast in May 2009.

13 A I'm not sure.

14 JUDGE SIPPEL: Would you identify

15 --

16 MR. KNOWLES-KELLETT: I am Bill  
17 Knowles-Kellett. I'm from the Enforcement  
18 Bureau.

19 THE WITNESS: Hi, Bill.

20 MR. KNOWLES-KELLETT: And with my  
21 colleague Gary Oshinsky, we are representing  
22 the Enforcement Bureau in this proceeding.

1 BY MR. KNOWLES-KELLETT:

2 Q My question is, you've testified  
3 that you put together an irresistible deal,  
4 what you termed an irresistible deal, --

5 A Yes.

6 Q -- in May 2009.

7 A Yes.

8 Q And I was wondering what aspects  
9 of that deal did you believe were irresistible  
10 and why did you believe -- well, let's start  
11 with that.

12 A May I ask a question? There may  
13 be financial -- this is one of those topics  
14 that was financially related. So perhaps just  
15 to make sure that I can give you the fullest  
16 answer possible, if you want to close?

17 MR. CARROLL: I think Mr. Solomon  
18 is probably the only person in here who is not  
19 subject to the confidentiality agreement.

20 MR. PHILLIPS: Goldsmith.

21 MR. CARROLL: Oh, I'm sorry. Mr.  
22 Goldsmith.

1 MR. PHILLIPS: Mr. Goldsmith.

2 MR. CARROLL: Yes, Mr. Goldsmith.  
3 He's from Comcast. So he just -- if both of  
4 you would just step outside, it would be fine.

5 PARTICIPANT: Or you can sign the  
6 order.

7 JUDGE SIPPEL: Thank you, sir.  
8 Thank you.

9 (Whereupon, the foregoing matter  
10 went off the record at 5:32 p.m., to reconvene  
11 in closed session.)  
12  
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## 1                   CLOSED SESSION

2                   THE WITNESS: Well, there would  
3                   have been a number of components. Obviously  
4                   the most important thing was the evolution of  
5                   the network, the inclusion of the major  
6                   rights, the inclusion of thousands of hours of  
7                   coverage, both wide and Encore, as we have  
8                   been through.

9                   Those are extremely valuable.  
10                  None of the other networks on the sports tier,  
11                  no other single sports networks have any grand  
12                  slams of coverage, much less some or  
13                  significant portions of all four. And that's  
14                  about eight weeks a year of very valuable  
15                  product to a distributor.

16                  All of the other elements that we  
17                  talked about from a programming standpoint,  
18                  which, in fact, a distributor creates their  
19                  business on, is, can we get valuable content  
20                  that people want to see?

21                  The ratings that we show Mr. Bond  
22                  clearly illustrated that -- and his team that

1       there was significant audience interest.

2               But the thing that I said, why is  
3       it irresistible, is because from a financial  
4       standpoint, clearly the model of having sports  
5       networks is valuable for Comcast because they  
6       have many of them on their air and five of  
7       them that they own some or all of.

8               We were by comparison offering  
9       them the ability to carry those for their  
10       subscribers at a fraction of what it would  
11       cost them to or that it did cost them to air  
12       their own networks, number one, and also a  
13       very small increase on a relative basis from  
14       where we had been.

15               So we were reducing the price,  
16       slashing it, in effect, which is what we  
17       thought we had been asked to do. And he had  
18       indicated what he wanted us to do.

19               Now, he sort of said he didn't  
20       think we could do it because he needed it at  
21       a price so cheap that it would be hard for us  
22       to be able to deliver this kind of a program

1 service for those kinds of dollars.

2 So we thought that the combination  
3 of the quality of the content with the  
4 significant price cuts at different options  
5 for him to choose as to which way he wanted to  
6 do it, either at that mid-level tier, which is  
7 still about of where he had Golf and  
8 Versus, as an example, or at the higher-level  
9 tier, which is closer to where they were at  
10 something that resembled  
11 dollars a year, instead of  
12 dollars a year  
13 was a real bargain, especially because there  
14 was a lot more live, high-quality content on  
15 ours than on either of those.

16 You know, we're discussing how  
17 many live events at grand slam. We have live  
18 events from grand slams. Those are the  
19 networks, not only they don't have it.  
20 They're not even allowed to show clips. They  
21 have to sit outside and talk about what is  
22 going on in a place they're not allowed to be.

1 Those rights are all somewhere else.

2 So we were bringing a much higher  
3 caliber of content, a much higher total  
4 quantity of content for a fraction of the  
5 price. And, you know, all we did is take our  
6 cues from what they do for their own and say  
7 let's make it less expensive and as good, if  
8 not more, qualitatively. I figured that was  
9 an offer he couldn't refuse.

10 FURTHER CROSS-EXAMINATION

11 BY MR. KNOWLES-KELLETT:

12 Q My question went more towards why  
13 did they need you on the wider tier than on  
14 the sports tier? It seems to me that the  
15 Tennis Channel, they already had you guys. If  
16 you were a tennis fan, you would be at the  
17 sports tier.

18 A Yeah.

19 Q You know, why is it irresistible  
20 to very specifically move you to the wider  
21 spread tier? I think you went to that with  
22 the ratings. I'm sorry.

1           A       And I think that I could give you  
2       a list of reasons. And I'm happy to. But I  
3       think the most important reason is that they  
4       clearly believe that that is valuable because  
5       that is what they do with their own, that is  
6       what they do with Golf Channel, that is what  
7       they do with Versus, that is what they do with  
8       the Hockey Channel, that is what they do with  
9       the Baseball Channel, and that's what they did  
10      with the NBA Channel once they took ownership  
11      in them. They moved up once they took  
12      ownership. So clearly they thought that was  
13      a good thing to do.

14                So our reasons were that we  
15      thought, you know, Comcast gets time. They  
16      get a minute inside each half hour, two  
17      minutes an hour to sell an hour network. So  
18      by making it available to broader people,  
19      broader audience of subscribers, they could go  
20      sell that for a lot of money. That is one.

21                Two are the digital concerns. One  
22      of the reasons that the conversion to digital



1 and getting people to upgrade their service  
2 was one that we talked about. And higher  
3 ratings at the end of the day are very  
4 important.

5 Probably one of the big ones that  
6 we talked about a lot is the fact that I think  
7 Comcast knows that subscribers are allowed to  
8 choose whoever they want to to subscribe with.  
9 And the quality of the service that you offer  
10 is ultimately what decides that.

11 The most fickle subscribers are  
12 usually the ones who are the affluent and, as  
13 it correlates, the ones who watch live sports  
14 and so -- and particularly single sport  
15 networks, it appears. And so they're the most  
16 affluent. They're also the ones who are, for  
17 whatever reason, the most willing to change.  
18 They're easy pickings.

19 And so the satellite companies and  
20 the telephony companies who do compete with  
21 Comcast target those consumers. Tennis  
22 happens to be a favorite of those consumers,

1 as is Golf to a large degree. They're very  
2 similar in that regard.

3 So, you know, it was clear that  
4 what we were doing was trying to protect them  
5 from having what they call churn. And a small  
6 amount of subscribers moving means a lot of  
7 money in margin to a major distributor. That  
8 was another reason that was discussed in the  
9 meeting that was a big one.

10 MR. KNOWLES-KELLETT: Thank you.  
11 No further questions.

12 JUDGE SIPPEL: Thank you. Okay.

13 Mr. Phillips?

14 MR. PHILLIPS: I'm sorry. I have  
15 just a few, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. PHILLIPS:

18 Q Mr. Solomon, if I could start with  
19 the exhibit Mr. Carroll just left off with you  
20 on, which is I believe Comcast exhibit 707?

21 MR. PHILLIPS: We can let him back  
22 in. (End Closed Session.)